IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7979 OF 2004

Futarmal Nathmalji Jain..... Petitioner.

Versus

Shaikh Ismail Abdul Gani & Anr..... Respondents.

Mr. P.M.Gore for the Petitioner.

None for the Respondents.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 28TH SEPTEMBER, 2004.

P.C.:

Heard Advocate for the petitioner. Perused record.

2. The petitioner challenges the impugned findings arrived at by both the courts below on the point of requirement of the suit premises for business of the respondents landlords as well as comparative greater hardship will be caused to the respondents if the decree for eviction is not passed. The challenges are

three fold.

3. Firstly, considering the pleadings in the plaint the eviction proceedings were premature. In that regard attention is drawn to the contents of para 8 wherein it was stated that the cause of action for filing the suit for eviction arose in March, 1997 on refusal on the part of the petitioner to handover possession of the premises. Whereas in para 2, it was stated that the Sale Deed in relation to the property in question was dated 6th June, 1997 and therefore, there was no occasion for the respondents plaintiffs to demand possession even prior to purchase of the property. Undisputedly, the property was factually purchased by the respondents landlords much prior to 6th June, 1997. However, on account of the legal formalities to be complied with as the premises are lying in the Pune Cantonment Board area the execution of the sale deed was delayed and it was executed on 6th June, 1997 and therefore it came to be registered on 8th June, 2001. In the background of these facts not being disputed merely because para 2 of the plaint discloses the Sale Deed was dated 6th June, 1997 and

the cause of action is stated to have been arisen in March, 1997 it can not be concluded that the suit was premature. Besides this, undisputedly the respondents were the landlords of the petitioner much prior to June 1997 and it is not the case of the petitioner that in March, 1997 the respondents were not the landlords of the petitioner.

4. Second ground of challenge is that the petitioner is in possession of the suit premises for the last 20 years having therein his medical shop whereas, respondents had been carrying on their business on the handcart. In the circumstances, there was no justification for the respondents to seek eviction of the petitioner from the suit premises for his business to be carried on in the suit premises and they could have very well carried on their business on the handcart. It is neither for the petitioner nor for the court to direct the landlord as to how he should carry on his business and the law in that regard is well settled by the catena of decisions of the Supreme Court as well as this Court. Once the respondents having decided to carry on their business in the suit

premises and the need in that regard having been established and the issue of hardship having been dealt with by the courts below on the evidence led by the parties and proper findings arrived at by the courts below on both the issues, it cannot be said that merely because for last 20 years the respondents landlords had been carrying on their business on handcart, they should continue to do so and they should not have thought of shifting their business in the suit premises. In any case, there can be no interference in the impugned order on such ground in writ jurisdiction.

5. Reliance was sought to be placed on the decision of the Division Bench of the Gujarat High in the matter of **Ramniklal Manilal Bhatt vs. Ramanlal Nathubhai Kapadiya**, reported in 1986 Mah. R.C.J. 45. The attention was drawn to the observation, which reads thus:

> "There is no substance in the contention that there is a hostile discrimination and unreasonable classification amongst the

> landlords. The persons in possession of money who can afford to purchase or acquire tenanted property are a class by themselves. If they were in need of property for personal occupation they would purchase a vacant property or construct new one. When they purchase a tenanted property, they purchase it at incredibly low price and with full knowledge that the Rent Act protects the sitting tenant."

With utmost respect to the learned Judges of the Gujarat High Court, I am unable to subscribe to the views expressed at by the Division Bench. Apart from the fact that there is no material on record to take judicial notice about the contention raised on behalf of the petitioner that those landlords who purchase tenanted premises, they purchase the same at incredibly low price and that could be a justification to reject the application for eviction of the tenant.

6. For the reasons stated above, there is no case made out for interference in the impugned judgment of

the courts below which are passed on the issue of bonafide need of premises for the business of the respondents landlords as well as greater hardship to the respondents in case of refusal of the decree of eviction against the petitioner. The findings apart from being concurrent are clearly borne out from the record and does not warrant interference in the writ jurisdiction under Article 227 of the Constitution of India. Hence petition is rejected.

7. At the oral request of the learned Advocate for the petitioner, time to vacate the premises is extended till 31st January, 2005, subject to the petitioner along with all the major persons residing in the premises filing undertaking before the Registrar (Judicial) of this Court assuring that they will deliver the vacant and peaceful possession of the suit premises on or before 31st January, 2005 and will not induct any third person nor create any third party interest therein till then. The undertaking to be filed within three weeks from today.

8. Issuance of certified copy expedited.

Sd/-

(R.M.S.KHANDEPARKAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2348 OF 2004

IN

WRIT PETITION NO. 7979 OF 2004

Futarmal Nathmalji Jain..... Petitioner.

Versus

Shaikh Ismail Abdul Gani & Anr..... Respondents.

Mr. P.M.Gore for the Petitioner.

None for the Respondents.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 28TH SEPTEMBER, 2004.

P.C.:

In view of the rejection of the Writ Petition No.

7979 of 2004 the present Civil Application does not survive. Hence dismissed.

Sd/-

(R.M.S.KHANDEPARKAR, J.)